

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE
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March 25, 1998

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Consumer Advocate

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Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, DC 20554

Via Federal Express

Re: LCI Petition for Expedited Declaratory
Rulings
CC Docket 98-5

Dear Secretary:

Enclosed please find an original and four copies of the Amended Comments of the State Advocates in Response to the Petition of LCI Requesting Declaratory Ruling Concerning Section 271 in the above-referenced matter. The only difference between these Amended Comments now being filed, and the State Advocate Comments filed on March 20, 1998, is that the Maryland Office of People's Counsel and the Texas Office of Public Utility Counsel have also joined the group of State Advocates filing these Amended Comments. Accordingly, State Advocates request that these Amended Comments be accepted as if they had been originally filed on March 20th.

Please indicate your receipt of this filing on the additional copy provided and return to the undersigned in the enclosed self-addressed, postage prepaid, envelope. Thank you.

Sincerely yours,

Philip F. McClelland
Assistant Consumer Advocate

Enclosure

cc: All parties of Record
46254

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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In the Matter of:

LCI Petition for Expedited : CC Docket 98-5
Declaratory Rulings :

AMENDED COMMENTS OF STATE ADVOCATES
IN RESPONSE TO THE PETITION
OF LCI REQUESTING DECLARATORY
RULING CONCERNING SECTION 271

I. INTRODUCTION

The State Consumer Advocates ("State Advocates") listed below file these Amended Comments in order to respond to the Petition of LCI International Telecom Corp. ("LCI") seeking a declaratory ruling concerning the application of Section 271 of the Telecommunications Act of 1996 ("Act"). The only difference between these Amended Comments now being filed, and the State Advocate Comments filed on March 20, 1998, is that the Maryland Office of People's Counsel and the Texas Office of Public Utility Counsel have also joined the group of State Advocates filing these Amended Comments and are listed below. Accordingly, State Advocates request that these Amended Comments be accepted as if they had been originally filed on March 20, 1998.

LCI properly brings before the Federal Communications Commission ("FCC") the problem that Competitive Local Exchange Carriers ("CLECs") have established such a small

customer base that local competition has brought consumers very little benefit. LCI Pet. at 1. LCI correctly explains that nearly two years after the passage of the Act there is very little local competition, especially residential competition. Id. LCI contends that these competitive problems relate to the use of the Operations Support System ("OSS"), the availability of Unbundled Network Elements ("UNEs"), and pricing. Id. at 2.

In order to resolve these problems, LCI proposes that the Regional Bell Operating Companies ("RBOCs") should be encouraged to segregate their operations into a NetCo - providing wholesale services - and a ServeCo - providing retail services. Id. at 3. According to LCI, this would change the manner in which many consumers would receive their retail telephone services and facilitate entry of RBOCs into the interLATA market.

State Advocates recognize that the LCI Petition is an important step in attempting to overcome some of the obstacles that have retarded local competition. State Advocates share LCI's concern that the Act was meant to provide consumers with competitive benefits, but little in the way of competitive benefits have been realized so far. State Advocates submit that the question as to how consumers can receive benefits under the Act should be of paramount concern as the FCC reviews the LCI Petition.

State Advocates do not at this time, however, agree that the specific relief requested in the LCI Petition will adequately resolve the underlying competitive problems that now exist or that the corporate restructuring proposed by LCI will necessarily bring the consumer benefits which LCI intends. State Advocates suggest that the relief requested should be substantially strengthened with greater consumer safeguards before it should be approved by the FCC. State Advocates submit that the FCC must ensure that, even if the LCI alternative were

adopted, this should not eliminate any of the other requirements of Section 271 that would remain within the Act. LCI's Petition also raises other issues as to the extent to which ServeCo would be regulated in its provision of retail service that must be addressed.

II. INTEREST OF STATE ADVOCATES

A group of state consumer advocates have joined to submit these Comments.

Many of these State Advocates were created by state legislatures in order to represent consumers before state and federal regulatory agencies. The consumer advocates filing these Comments are as follows:

California The Utility Reform Network	Iowa Office of Consumer Advocate
Maine Public Advocate's Office	Missouri Office of the Public Counsel
New York Public Utility Law Project	Ohio Consumers' Counsel
Pennsylvania Office of Consumer Advocate	South Carolina Dept. of Consumer Affairs
Maryland Office of People's Counsel	Texas Office of Public Utility Counsel

III. COMMENTS

A. Under the LCI Proposal, the RBOC Will Continue to Maintain Shareholder Control Over NetCo and ServeCo.

State Advocates emphasize that the LCI Petition is offered in order to provide another means of facilitating competition under the Act. However, the NetCo and ServeCo corporations created through the LCI proposed restructuring will still largely be under the control of the RBOC. While LCI intends to reduce this control by requiring 40% of the stock of ServeCo to be sold to the public, fully 60% of this corporation will remain in the hands of the RBOC. *Id.* at 30. It would appear that 60% control would be sufficient to dominate the control of ServeCo. Further, it appears that NetCo will remain entirely owned by the RBOC. State Advocates recognize that complete divestiture would have the effect of releasing the anticompetitive control of the RBOCs over NetCo and/or ServeCo. However, LCI has not proposed such divestiture.

Thus, the elimination of RBOC control, which LCI seems to intend, would not effectively be realized under its proposal and further divestiture may be necessary.

B. State Advocates Are Concerned with the Possible Required Migration of Consumers from their Incumbent RBOC Service Provider And the Rates and the Terms Under Which They Would Receive Service.

State Advocates are concerned with some aspects of the LCI restructuring plan to the extent that it would change the manner by which consumers purchase their service. As currently set forth within the Act, consumers are to realize the opportunity to choose as to whether or not they wish to be served by their incumbent provider or switch to a new competitor that offers more attractive service.

It is certainly important that competition should be brought to residential consumers, as LCI suggests. LCI Pet. at 33. However, it is somewhat troubling under the LCI Petition that such competition could occur largely as a result of the elimination of NetCo as a potential service provider. LCI Pet. at 15. As suggested by LCI, the transfer of new customers, and the balloting of old customers, may mean that some consumers will lose the opportunity to continue purchasing service from NetCo. This could also lead to some confusion among consumers - some of whom will continue to be served by NetCo for some period and others will be compelled to purchase service from ServeCo or other CLECs.

State Advocates also suggest that this transition could result in a change in the rates and terms of service offered to consumers. It is clear that ServeCo and CLECs, which decide to use the RBOC network to provide local service, must purchase from NetCo the same Unbundled Network Elements ("UNEs") and use the same Operating Support System ("OSS").

State Advocates recognize LCI's position that, if all consumers are required to be served via such

UNEs and the OSS, then the UNEs and OSS offered by NetCo should improve.

It is clear that CLECs do not now serve residential consumers in large numbers. State Advocates are concerned as to how the residential rates for ServeCo and the CLECs will compare with the rates of their incumbent RBOC provider. It is also not clear how corporate restructuring will affect the supplier of last resort obligation.

State Advocates welcome the greater competition that LCI has in mind. State Advocates emphasize that competition should reduce the rates offered to consumers and such price reductions were part of the reason why the Act was passed. However, State Advocates are concerned that at this stage in the competitive process it is not clear that rate reductions for the residential consumers would result from LCI's proposal. Therefore, State Advocates propose that the rates offered by ServeCo under such transition should be capped at no more than their current levels. This would be necessary in order to preserve the goal of universal service and the national penetration rates that consumers currently enjoy.

It is also important that state commissions should continue to have the opportunity to determine how such a competitive transition would be accomplished. State commissions should be involved in determining the pace of transition to the market that LCI proposes. State commissions should also be involved in reviewing other issues, such as what providers would function as carriers of last resort in such a revised market. State Advocates emphasize that no residential consumer should lose telephone service as a result of this transition.

C. Whether Or Not ServeCo Should Be Deregulated Concerning Its Intrastate Services Would Be an Issue That Must Be Resolved By State Commissions.

State Advocates recognize that LCI anticipates a fundamental change by which the RBOC will be regulated as a service provider. LCI projects that ServeCo would be "regulated

like a Competitive Local Exchange Carrier ('CLEC'), without the restrictions and level of oversight that otherwise would be necessary." LCI Pet. at 4. So long as the RBOC still holds majority ownership of ServeCo, and may retain the use of the RBOC brand name, State Advocates question whether ServeCo should receive such reduced regulatory oversight. This may well be a controversial issue in a number of state jurisdictions and must be resolved by state commissions. As noted above, one possibility would be to impose a cap or ceiling at ServeCo rates at no more than their current levels.

D. The FCC Must Continue to Make Certain that All of the Requirements of Section 271 Are Met.

As explained above, it is important to take steps to create the opportunity for effective local competition in the telecommunications market. However, regardless as to whether or not the corporate restructuring that LCI intends is accepted by the Commission, the statutory Section 271 requirements will remain. State Advocates emphasize that under Section 271(c)(1)(A), interLATA entry requires that competing CLECs must provide exchange service to "residential and business subscribers." State Advocates suggest that this test is contained within the Act to make certain that both business and residential subscribers have determined that they will receive a benefit by using the services of a CLEC and have made the decision to switch service providers.

Further, the "public interest" requirement remains in place within Section 271(c)(1)(A) as well. State Advocates again suggest that the foundation of this public interest test is that consumers must find benefit in the CLEC market and have decided to switch from the RBOC in order to satisfy the Track A requirements. The existence of such benefit from competition in the local market under Track A is a necessary condition before the RBOC can

enter the interLATA market. LCI's Petition, as revised in accordance with the above recommendation, may well mean that consumers will enjoy better local service at reduced prices. Nonetheless, State Advocates submit that the realization of such consumer benefits must continue to be the fundamental requirement under the "public interest" requirements of Section 271.

III. CONCLUSION

State Advocates applaud LCI's efforts to advance the debate on how to bring the benefits of local competition to residential customers. State Advocates, however, submit that the relief represented by LCI might not in itself produce the desired result. State Advocates respectfully request the FCC to consider these Comments as it resolves the issues raised by the LCI Petition.

Respectfully submitted,

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Respectfully submitted,



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Dated: March 25, 1998
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of:

LCI Petition for Expedited	:	CC Docket 98-5
Declaratory Rulings	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, Amended Comments of the State Advocates in Response to the Petition of LCI Requesting Declaratory Ruling Concerning Section 271, upon parties of record in this proceeding and in the manner listed below.

Dated this 25th day of March, 1998.

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A handwritten signature in black ink, appearing to read "Philip F. McClelland". The signature is fluid and cursive, with the first name "Philip" being more prominent and the last name "McClelland" following in a similar style.

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